



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/787,781	05/24/2001	Jacques Benveniste	12291.0059USWO	7504
23552 7590 04/08/2009 MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903				
EXAMINER				
ALEXANDER, LYLE				
ART UNIT		PAPER NUMBER		
1797				
MAIL DATE		DELIVERY MODE		
04/08/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/787,781

Applicant(s)

BENVENISTE ET AL.

Examiner

Lyle A. Alexander

Art Unit

1797

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 December 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6, 8-14, 23-31 and 36-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6, 8-14, 23-31 and 36-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/C)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 6, 8-9 and 27-28 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Barns (USP 5,583,432).

Barns teach a method and apparatus for determining the fibrinogen characteristics of blood based upon application of at least two a.c. frequencies applied to the blood sample. Column 6 lines 3+ teach applying one, two or four different electromagnetic fields to the sample and measuring the frequencies and magnitude. This data is correlated to chemical and/or physical parameters, such as fibrinogen concentration and viscosity, of the sample. The Office has read the claimed *"first transducer-receiver having an electromagnetic coil and transforms the field into a first electric current"* and *"a second ... into a second electric current"* on the taught **application of at least two a.c. frequencies**. Column 1 lines 25-67 teach that measurement of fibrinogen levels are manifested by increases in plasma viscosity. The Office has read the claimed *"testing for inhibition of coagulation"* on the taught fibrinogen and viscosity measurements. It is advantageous to make these measurements without physical contact with the sample by indirect means such as electromagnetic fields. Column 4 lines 43+ also teach the advantages of making measurements without physical contact "... help preclude biohazard and to provide an analogue or digital readout ..." Columns 7-8 lines 62-7 respectively teach use of two

identical sets of the device where one has the sample of interest and the other a "dummy sample". Column 11 lines 8-22 teach the subtraction to determine hemoglobin level. The Office has read this on the claimed step of subtracting the second signal from the first signal to determine the effect of the sample and correlation to a coagulation inhibition level.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 10-14, 23-26, 29-31 and 36-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barns.

See Barns supra.

Barns is silent to the application of data generated to the production of homeopathic products of claim 10 and the steps of providing an anticoagulant source substance of claim 11.

With respect to claim 10, in light of the above 35 USC 112 second paragraph issues, it is not clear how the claimed method is used to control the production of homeopathic products or what the products might be. However, the Office maintains it would have been desirable to use a well known method that measures physical parameters of a solution without physical contact to gain the advantages of "... help preclude biohazard and to provide an analogue or digital readout ..." It would have been within the skill of the art to modify Barns and monitor the physical parameters of the

solution for the purpose of controlling production using the method of Barnes to gain the above advantages.

With respect to claim 11, in light of the 35 USC 112 second paragraph rejections, it is not clear what the placing of the anticoagulant in the excitation field is accomplishing other than acting as a blank sample. It would have been within the skill of the art to modify Barnes and include the anticoagulant in the taught "dummy sample" to gain the advantages of subtracting the effect of the anticoagulant on the electromagnetic field to gain the advantages of a more accurate sample measurement.

Response to Arguments

Applicant's arguments filed 12/30/08 have been fully considered but they are not persuasive.

Applicant's amendments and remarks were sufficient to overcome all of the 35 USC 112 first and second paragraph issues. Additionally, the 12/30/08 terminal disclaimer obviated the obviousness type of double patenting rejections.

Applicants' traverse the 35 USC 102 rejections over Barnes stating this reference fails to teach how to test for inhibition of coagulation. With respect the apparatus claims 6 and 8-9, the Office maintains the apparatus has the capability to be used in an identical manner and has been properly rejected under 35 USC 102 because the method of intended use of an apparatus is of no patentable moment. With respect to the method claims, the Office maintains the pending claim language is sufficiently broad to have been properly read on Barnes. Specifically, the pending claim language only give general steps of comparing the measurement of two different samples which is

clearly taught by Barnes. The instant claim language does not supply a specific algorithm to calculate the claimed "coagulation or anticoagulation effect."

Applicants' argue Barnes does not teach applying two electromagnetic fields to interact with two different samples. In the absence of specifically claiming what is the "substance", the Office maintains the instant claim language is sufficiently broad to have been properly read on Barnes that teaches measurement with the sample and without (e.g. the blank) which has been properly read on the claimed without the "substance."

Applicants' states Barnes teaches measurements of fibrogen levels and fails to teach the claimed "coagulation or anticoagulation effect." Again the Office maintains the instant claim language is sufficiently broad to have been properly read on the Barnes. The instant claim language does not provide any specific steps or algorithm that distinguish over Barnes.

Applicants' state Barnes does not teach any steps that are correlated to coagulation. The Office maintains the detection fibrinogen by Barnes is clearly related to coagulation and anticoagulation. Barnes has been properly applied against the pending claims.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lyle A. Alexander whose telephone number is 571-272-1254. The examiner can normally be reached on Monday, Tuesday and Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Lyle A Alexander

Art Unit: 1797

Primary Examiner
Art Unit 1797

/Lyle A Alexander/
Primary Examiner, Art Unit 1797